

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

LINDA L. BURR,

Plaintiff,

v.

Civil Action No. 5:06CV35
(STAMP)

MICHAEL ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE AND
GRANTING MOTION TO WITHDRAW OBJECTIONS TO
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. Procedural History

Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) ("EAJA"), the plaintiff, Linda L. Burr, filed a motion for an award of attorney's fees in the amount of \$3,700.00. The defendant filed a response in opposition to the motion.

This matter was referred to United States Magistrate Judge James E. Seibert for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B). Magistrate Judge Seibert entered a report and recommendation recommending that the plaintiff's motion for an award of attorney's fees be granted in part and denied in part. Specifically, the magistrate judge found that the plaintiff was entitled to an award of attorney's fees but that the amount claimed was unreasonable. The magistrate judge concluded

that the awarded amount should be \$2,000.00. The plaintiff filed objections. Thereafter, the plaintiff filed a motion to withdraw her objections.

II. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Although the plaintiff filed objections, she subsequently filed a motion to withdraw her objections. Because this Court will grant that motion, the report and recommendation of the magistrate judge will be reviewed for clear error.

III. Discussion

Based upon the parties' briefs, the magistrate judge determined that the plaintiff's motion for an award of attorney's fees was warranted. However, the magistrate judge found that the amount of attorney time billed--29.6 hours--was excessive. Given the attorney's familiarity with the case, the partially favorable decision obtained, and the two-year period of administrative review, the magistrate judge calculated sixteen hours as a

reasonable number of billable hours. Accordingly, the magistrate judge concluded that the amount of attorney's fees awarded under the EAJA in this action should be \$2,000.00.

Having reviewed the record and the parties' pleadings, this Court concludes that the magistrate judge's determinations are not clearly erroneous. Accordingly, this Court finds that plaintiff's motion for attorney's fees under the EAJA should be granted as framed.

IV. Conclusion

For the reasons set forth above, this Court finds that the magistrate judge's recommendation is not clearly erroneous and hereby AFFIRMS and ADOPTS the report and recommendation of the magistrate judge in its entirety. Accordingly, the plaintiff's motion for an award of attorney's fees in the amount of \$2,000.00 is GRANTED. It is also ORDERED that the defendant pay the awarded fees directly to the plaintiff's attorney, Montie VanNostrand, Esq., VanNostrand & Morton, P.L.L.C., P.O. Box 247, Webster Springs, WV 26288. It is further ORDERED that the plaintiff's motion to withdraw objections to the magistrate judge's report and recommendation be GRANTED.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: October 22, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE